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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

ORACLE USA, INC., *et al.*,

Plaintiffs,

v.

SAP AG, *et al.*,

Defendants.

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 SAP AG, SAP AMERICA, INC., and
 TOMORROWNOW, INC.

No. 07-CV-01658 PJH (EDL)

**STIPULATION AND [PROPOSED] ORDER
 REGARDING DEADLINE TO ACCEPT OR
 REJECT REMITTITUR**

Date: N/A

Time: N/A

Place: 3rd Floor, Courtroom 3

Judge: Hon. Phyllis J. Hamilton

1 Plaintiffs Oracle USA, Inc., Oracle International Corporation and Siebel Systems,
 2 Inc. (“Oracle”) and Defendants SAP AG, SAP America, Inc., and TomorrowNow, Inc.
 3 (“Defendants” and together with Oracle the “Parties”) submit this Stipulation and [Proposed]
 4 Order regarding the deadline for Oracle to accept or reject the remittitur.

5 WHEREAS, on September 1, 2011, this Court granted “a new trial as to actual
 6 damages, conditioned on Oracle’s rejection of a remittitur to \$272 million” and ordered that
 7 “Oracle shall submit a statement accepting or rejecting the remittitur no later than September 30,
 8 2011 (or the parties shall submit a stipulated request for additional time, if necessary).” ECF No.
 9 1081 at 20:13-19;

10 WHEREAS, on September 16, 2011, this Court extended the deadline to accept or
 11 reject the remittitur “until after this court has fully considered Oracle’s request for an order
 12 certifying a request for interlocutory review, and has determined what if any question(s) may be
 13 certified; and for an additional 30 days beyond the date the Ninth Circuit either approves or
 14 denies any such application.” ECF No. 1088 at 2:2-5;

15 WHEREAS, if the Court denies Oracle’s request for certification, the Ninth
 16 Circuit will not approve or deny such application and the 30-day deadline will not run; and

17 WHEREAS the Parties desire to ensure that Oracle’s deadline to accept or reject
 18 the remittitur will not expire while an interlocutory appeal is pending.

19 NOW, THEREFORE, THE PARTIES HEREBY STIPULATE AND REQUEST
 20 THE COURT TO ORDER that Oracle shall submit a statement accepting or rejecting the
 21 remittitur no later than:

22 (1) 30 days after issuance of an order by this Court denying Oracle’s pending
 23 motion for certification (ECF No. 1089);

24 (2) if this Court grants Oracle’s pending motion for certification, 30 days after
 25 issuance of an order by the Ninth Circuit denying application for leave to appeal;

26 (3) if this Court grants Oracle’s pending motion for certification, the Ninth Circuit
 27 grants leave to appeal, and the Ninth Circuit affirms the Court’s Order Granting Defendants’
 28 Motion for JMOL, and Motion for New Trial; Order Denying Plaintiffs’ Motion for New Trial;

Order Partially Vacating Judgment (ECF No. 1081), 30 days after issuance of the Ninth Circuit's mandate; provided that the Parties hereby stipulate that the Ninth Circuit's issuance of its mandate shall be stayed pending any petition for certiorari and, if the Supreme Court grants certiorari, until the Supreme Court's final disposition.

DATED: October 31, 2011

BINGHAM McCUTCHEN LLP

By: /s/ Geoffrey M. Howard
Geoffrey M. Howard

Attorneys for Plaintiffs Oracle USA, Inc., *et al.*

In accordance with General Order No. 45, Rule X, the above signatory attests that concurrence in the filing of this document has been obtained from the signatory below.

DATED: October 31, 2011

JONES DAY

By: /s/ Tharan Gregory Lanier
Tharan Gregory Lanier

Counsel for Defendants
SAP AG, SAP AMERICA, INC., and
TOMORROWNOW, INC.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: November 8, 2011

